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Exhibit 19

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October 1, 2020

Planning Board
Grafton, MA

61 MAPLE STREET REALTY TRUST
601 HIGH STREET, SUITE 101
DEDHAM, MASSACHUSETTS 02026
TELEPHONE: 781-461-1060
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October 1, 2020

Town of Grafton
Planning Department
30 Providence Road
Hampton, MA 015191

ATTN: Christopher McGoldrick

RE: **FARNUMVILLE ACRES**

Dear Chris,

Enclosed you will find a copy of a decision rendered in a case against the Town which deals squarely with the issue of the road proposed in my subdivision that was rejected by your Board at our initial preliminary subdivision hearing on September 24, 2020. The road in this decision is very similar to the road in my plan and is in fact longer and has more housing. The decision deals directly with dead end streets.

As you can see from the Judgment, the decision by the Town that the design was violative of the dead end street definition was summarily rejected by the Judge who also commented that the Town's interpretation "seems to bend the English language out of recognizable shape and to make almost all streets dead end". The Court also makes mention of the Lordvale Acres development a much larger development than mine with similar street layout which was approved by the Town.

After reviewing the current Subdivision Rules and Regulation of the Planning Board , I noticed that the dead end street definition has not changed since the decision. In addition, as we both know the Board has approved similar road designs to mine.

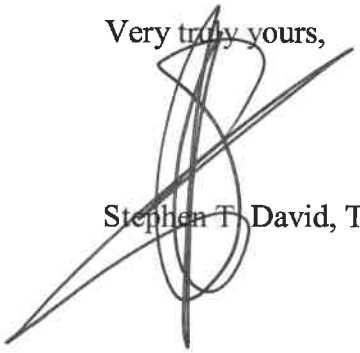
I would also like to point out that the Judge did find that the Decision of the Board to deny the roadway design was bad faith and awarded damages incurred by the Plaintiff for additional engineering fees as well as attorney's fees in bringing the lawsuit.

I have provided this decision with the hope that it will convince the Board that my road design is in compliance with the Rules and Regulation of your Planning Board and requires no waivers.

In conclusion, I would appreciate any and all comment from the Town and Consultants to achieve an amicable resolution to my application.

Thank you in advance for your courtesy and cooperation in this matter.

Very truly yours,



Stephen T. David, Trustee

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 87-2239

FOSTER YEADON,
Plaintiff

vs.

THE GRAFTON PLANNING BOARD, et al,[1/]
Defendants

MEMORANDUM OF DECISION

In this case plaintiff Foster Yeadon ("Yeadon") brings a complaint that defendants' denials on June 22 and September 2, 1987 of his application for a proposed subdivision of approximately 98 single-family homes, to be known as Hassanamesit Village, were arbitrary and capricious, and exceeded the authority of the Grafton Planning Board ("the Board"). An alternative theory is that a denial on three specific grounds was tantamount to an approval on condition those three conditions were satisfied.

The amended complaint is in six counts:

Count I - Statutory appeal pursuant to G.L. c. 41, § 81BB from the June 22, 1987 Planning Board vote. The allegation is that since the vote was held without a public meeting, a declaratory judgment is appropriate that the Board's disapproval of Yeadon's median divided road as incorporated in Plan No. 2 was arbitrary and capricious, and exceeded the Board's authority.

[1/]Joyce A. Nicholson, Chairman; and Robert E. Gauvin, Robert M. Misterka, Robert Sudmeyer and George Peterson, Jr., as Members of the Planning Board of Grafton.

5/16/90: Copies mailed to Attys: Kopelman, Brody/Saillant & J. Hamilton/Bassett /lb

Count II - Statutory appeal pursuant to G.L. c. 41, § 81BB from the Board's September 2, 1987 vote of disapproval of plaintiff's Plan No. 2 (median road), based on unpublished regulations prohibiting the incorporation of a single access median divided highway. The allegation is that since the published Grafton subdivision rules and regulations did not adequately inform Yeadon of the standards necessary for approval, and that since the Board allegedly failed to adhere to its published procedures, a declaratory judgment is appropriate for the same purpose and the same reasons as in Count I.

Count III - For declaratory judgment concerning the interpretation of subdivision rules and regulations, since an actual and bona fide controversy exists between Yeadon and the Board.

Count IV - Damages for taking of Yeadon's property; plaintiff did not pursue this count.

Count V - Damages pursuant to G.L. c. 41, § 81DD, since Yeadon allegedly justifiably relied on the Board's July 8, 1985 and December 8, 1986 approvals.

Count VI - Costs pursuant to G.L. c. 41, § 81DD.

Plaintiff's prayer is that the Court annul the Board's vote to require dual access (Count I); annul the Board's disapproval of Yeadon's subdivision (Count II); order the Board to approve Yeadon's definitive plan, with a median divided roadway (Counts I, II, and III); award damages for a taking (Count IV, not pursued); award damages and costs pursuant to G.L. c. 41, § 81DD; and enter

an order permitting plaintiff to develop Hassanamesit Village as a sub-division of single-family homes with a single access road.

The case was heard on a stipulation of facts and on testimony of plaintiff; of plaintiff's expert engineer Hamar Clarke; of defendants' urban planner Peter Lowitt; and of Planning Board members Joyce Nicholson (Chairperson) and Robert Misterka. The trial was on March 30, April 2 and 3.

The case was argued and briefed. Requests for findings were filed.

The trial generated 24 exhibits, 20 of which were stipulated, plus 4 exhibits for identification only.

The Court makes the following:

I. FINDINGS OF FACT

It was stipulated that:

1. The plaintiff owned 72.7 acres of land in Grafton. (Stipulation 1)

2. The defendant, the Grafton Planning Board ("the Board"), has promulgated "Rules and Regulations Governing the Subdivision of Land" ("Subdivision Regulations") which include regulations for the construction of roads. (Stipulation 2)

3. The Grafton zoning by-laws specify that the road construction regulations apply to condominium projects as well as to residential subdivisions. (Stipulation 2)

4. On or about March 11, 1985 Yeadon presented the Board with a preliminary plan for a residential subdivision known as

Hassanamesit Village ("the Village"). (Stipulation 3) I find from testimony that the preliminary plan shows 98 house lots.

5. Yeadon's land has less than 700 feet of frontage on Providence and Bruce Streets. (Stipulation 12)

6. The sole entrance to the Village was shown as Thomas Hooker Trail.

7. The subdivision is to the east of a state highway, Route 122. It contains wet lands, an old Indian burial ground and topography which requires in places the streets to have a grade of 8-9 degrees. I find, based on the testimony, that the presence of an Indian burial ground and the wet lands made a second road impractical.

8. On May 8, 1985, the Board told Yeadon that all of the streets in his subdivision would be classified as "minor streets." (Stipulation 4)

9. Subdivision Regulations § 2.1.1.33 defines "street, minor" as: "A street which in the opinion of the board is being used or will be used primarily to provide access to abutting lots and which will not be used for through traffic."

10. There is no doubt that the Planning Board can require a major road entering a subdivision. See Ex. 14, Subdivision Regulations, §2.1.1.32. However, based upon the testimony heard, I find that the Board has always treated the entrance of a subdivision as a minor road.

11. Under the Subdivision Regulations, the minimum width of right-of-way is stated to be fifty feet for minor streets, and

sixty feet for major streets. (Reg. 4.1.4.1)

12. Yeadon was told that dead end streets cannot be longer than 500 feet "unless in the opinion of the Board a greater length is necessitated by topography or other local conditions." (Subdivision Regulations, § 4.1.6.3)

13. I find that on May 8, 1985, the defendant Board told plaintiff that a double barrel road or median divided highway would alleviate any problem of a dead-end street.

14. On July 8, 1985, the Board voted to approve Yeadon's preliminary plan. (Stipulation 5)

15. The July 8, 1985 minutes of the Board's vote are plaintiff's Ex. 18. The minutes state: "...[I]t was unanimously voted to approve (emphasis added) the preliminary plan with the following [three] stipulations (emphasis added): The Board is not approving the access road from Bruce Street to the point where it divides Station 13 and the definitive plan will be required to have an alternative entrance road, for example a median divided highway to assure safe and adequate access for normal traffic and emergency vehicles". (Plaintiff's Ex. 18; emphasis as supplied in Stipulation 5). The other two conditions stated refer to the loop water system with water main and to grading of the roads. (Plaintiff's Ex. 18). Defendants make no contention that plaintiff's plan is in any way deficient with respect to these latter two stipulations.

16. The July 9, 1985 letter from the Planning Board is plaintiff's Ex. 2. In that letter, the Board told Yeadon that it

had voted unanimously to approve his preliminary plan on the condition that the plan incorporate "a median divided highway [emphasis added] to ensure that the situation of long dead end streets and extensions of dead end streets is alleviated." (Ex. 2).

17. On December 19, 1985 the Town Engineer wrote to the Board and advised them that he was not in favor of a median divided road. In lieu of the median divided road he suggested a second road or the elimination of the median strip so that Thomas Hooker Trail would be a wider single access road. (Stipulation 6 and Ex. 3).

18. I find that in May, 1986, the Town amended the zoning by-laws by doubling minimum lot size from 20,000 to 40,000 square feet.

19. On July 14, 1986, Yeadon's engineers filed a "definitive" plan. (Plan No. 1, Ex. 4). This first definitive plan shows a single access median divided road. (Stipulation 7)

20. On August 21, 1986, the highway engineer questioned the single entrance and exit. Ex. 5.

21. I find that Yeadon's engineers failed to grandfather the plan. He sued and recovered from them.

22. On December 8, 1986 the Board held a public hearing and disapproved the definitive plan. The disapproval states that the plan was turned down because lot sizes were too small and the frontage was inadequate. I infer it did not mention the median divided highway access. (Stipulation 8; also Ex. A).

23. As a result of its December 8, 1986 disapproval, Yeadon retained a new engineer, Rubin, to design a revised and amended definitive plan. The revised plan dated June 5, 1987 shows a median divided road (as had been recommended by the Board in Ex. 2) and I infer half as many lots. (Stipulation 9). This plan was referred to as Plan No. 2.

24. At the June 1987 Planning Board meeting the revised definitive plan (Plan No. 2) was not accepted because there was no engineering stamp and there were continuing questions about the roads.

25. This plan, including the wet land crossing, was approved by the Conservation Commission which issued an order of conditions, which is on file with the Registry. See Ex. 7 and Stipulation 10.

26. On June 11, 1987, the Board asked the Town Engineer, Jack Goodhall, to comment on Yeadon's definitive plan. Ex. 8.

27. On June 16, 1987, the Town Engineer sent a memorandum to the Board, stating: "I recommend that the Board decide on the scenario for the access road off Bruce Street prior to distribution of the plan to the Town departments." Ex. 9.

28. On June 22, 1987, the plaintiff had a meeting with the Board, at which time it was suggested that he withdraw his plan to avoid the ninety-day limit imposed on the Planning Board by the statute. He declined to do so.

29. On June 23, 1987 Yeadon received a letter from the Board advising him of a vote of the Planning Board which had occurred on the previous day (June 22, 1987). The letter stated: "The Board

voted to request you to withdraw the plan in order to address the deficiencies in the Town Engineer's Comments." (A copy of the comments was enclosed.) The letter also stated that the Board had voted that it was not in favor of the double-barrel access road to the subdivision from Bruce Street, but instead would require "dual access to the project which meets all the requirements of the current Subdivision Rules and Regulations." Ex. B. See also Stipulation 11.

30. There was a meeting of the Planning Board on July 27, 1987. Ex. B for identification.

31. On August 31, 1987 the Town Engineer wrote to the Board and advised it that "the grades have been designed to reflect a minor street. This is acceptable provided the size of the subdivision is not added to in the future". (Stipulation 14)

32. On August 31, 1987 the Assistant Town Engineer advised the Board: "The design has been based on minor road design. As long as this road does not exceed the volume for a major street it is alright". (sic) (Stipulation 15)

33. On September 2, 1987 the Planning Board disapproved Plan No. 2, setting forth twenty-six reasons for its disapproval, Ex. 11, including inadequate width and separation of the road, excessive length, and the grade such as to be a major street. None of the twenty-six reasons had been cited in the December 11, 1986 disapproval. (Stipulation 17). I find that they were pretextual and motivated by pique at plaintiff's June 22, 1987 refusal of the

request to withdraw his plan, and hostility by Chairperson Nicholson.

34. Reason No. 2 addresses itself to the allegedly faulty design of the median divided road, as follows: "It is of inadequate width and inadequate separation and is of excessive length and is therefore unacceptable". (Stipulation 18)

35. On June 24, 1988, the Conservation Commission approved Plan No. 2.

36. In October, 1988, Yeadon's engineers prepared a revised plan (Plan No. 3) with two separate roads as mandated by the Board. (Stipulation 19; also Ex. 12).

37. Yeadon has presented the October 1988 plan to the Conservation Commission. Although the Conservation Commission had approved the median divided road system shown on the June 5, 1987 plan (Plan No. 2), the Commission has not approved the October 8, 1988 plan (Plan No. 3), which has two roads crossing the wet lands. (Stipulation 21)

38. Testimony indicated that plaintiff is a member of the Commission and has repeatedly requested delays in final action. He is of the impression that final action will be unfavorable.

39. In February 1989, Plan No. 3 (the October 1988 plan with two separate roads) was approved by the Planning Board.

40. In October 1989, Plan No. 2 (the June 5, 1987 plan with the median divided road system) was approved by the Conservation Commission. There was no Conservation Commission action on that date as to plaintiff's Plan No. 3.

41. It was apparent that Joyce Nicholson, the Chairman of the Planning Board and a member since the mid 1970's, was hostile to Yeadon. She was very unresponsive in answering questions. She declined to give any indication as to what sort of double barreled road and median strip, if any, would ever be approved. She didn't care about topography and local conditions and said she would never approve this median divided roadway regardless of the regulations. (See Stipulation 13)

42. It was also apparent to me that the Chairman was opposed to further development of single homes. She had written letters to that effect in connection with the property of one Cruz.

43. The Board had approved several similar developments with median divided highway access, including Lordvale Acres in 1984 which had an access road 1,000 feet long, and served six times as many people. Defendants' attempts to distinguish that development as (1) a condominium which (2) had covenanted not to seek acceptance of the road as a town road totally miss the mark. The Board's duty does not depend on the former factor and is not modified by the latter (which, of course, was never offered to plaintiff).

44. Consequently, I find that the contrast of the allowance of the application of the Lordvale Acres development, with the denial of plaintiff's application, shows bad faith.

45. As a result, plaintiff has paid $47,000 in engineering fees which should not have been necessary.

DISCUSSION OF DEFINITIONS

The Grafton Subdivision Regulations provide: "...The planning board may require the construction of a divided roadway with a center island separating traffic flow as a condition of approval for dead end streets in excess of 500 feet (500') long," §4.1.6.5. (Mrs. Nicholson had stated that she would not consider such a divided highway for plaintiff no matter what.)

The definition of "streets, dead end" in the Subdivision Regulations, §2.1.1.31 on page 4, reads: "A street, extension of a street or system of streets connected to another street at one (1) point only. Any proposed street which intersects with a dead end street shall be deemed to be an extension of the dead end street."

Section 2.1.1.32 defines "street, major" as a street which in the opinion of the Board "is being used or will be used as a thoroughfare within the town...which will connect communities or which will otherwise carry a heavy volume of traffic, generally over fifteen hundred (1,500) vehicles per day, or a street intersecting one (1) or more streets which in the opinion of the board is used or will be used to carry a substantial volume of traffic from such streets to another major street...and normally including...shopping center, industrial park, cluster development, planned unit development, or a large subdivision,...."

The definition of "dead end streets" in §4.1.6.2 on page 39 is quite inconsistent with the foregoing. That definition reads: "The length of dead end streets shall be measured from the right

of way line of the intersecting street to the center of the turn around". Moreover §4.1.6.4 provides that dead end streets "in excess of 500 feet (500') shall be in a single family residential area and shall not extend further than fifteen hundred feet (1,500') from the street from which it originates and shall not serve more than six dwelling units."

There are repeated references to a "turn around" in the singular in the dead end street section on page 39, indicating that the term was not intended to apply to a circular road such as that shown in Ex. 7.

The May 8, 1985 minutes of the Planning Board, Ex. 17, contained a specific suggestion that compliance with the dead end street extension rules "may require a median divided highway." The minutes also go on to state: "In this case we feel that the developer and his engineers should explore alternative means of access, either different street route (sic) or a median divided highway to provide the required access to the network of streets starting at Station 1300."

The Subdivision Regulations prohibit more than six houses on a dead end street, § 4.1.6.4, and prohibit dead end streets longer than 500 feet, § 4.1.6.3. However, the Board can waive such requirements, and I conclude did so here in 1985.

The Regulations' definition of dead end street, §2.1.1.31, as any street or system of streets connected to another at one point only and making any other street which connects to a dead end street also an extension of a dead end street (which is treated the

same) seems to bend the English language out of recognizable shape and to make almost all streets dead end. The Board has treated plaintiff's entire subdivision as one big dead end street since it has only one connection to Bruce-Providence Street. Such an interpretation would make a street as long as Massachusetts Avenue a dead end street since it, by definition, "originates" from another street, and/or is "connected" to another street, at "one point only," and/or intersects with a dead end street.

The regulation as applied to plaintiff is illegally vague and ambiguous. He cannot be held to dead end street requirements.

II. RULINGS OF LAW

A party aggrieved by a denial by a planning board may appeal to the Superior Court. Rettig v. Planning Board of Rowley, 332 Mass. 476, 478 (1955). Rettig provides for a hearing de novo and, on the facts found by the court, for a ruling on the validity of the board's determination. Id. at 478-479. The court may determine whether upon the facts found the decision should be upheld, annulled, or modified. Parrish v. Board of Appeal of Sharon, 351 Mass. 561, 567 (1967), quoting Bicknell Realty Co. v. Board of Appeal of Boston, 330 Mass. 676, 679 (1953).

The review is limited to the reasons given by the planning board. Canter v. Planning Board of Westborough, 4 Mass. App. Ct. 306, 307 (1976) (Canter I). Such reasons must be rooted in the board's rules. See c. 41, § 81M and § 81U and Fairbairn v.

Planning Board of Barnstable, 5 Mass. App. Ct. 171, 176-177, 178-179 (1977).

It is central to this case that where a planning board has approved a subdivision plan subject to conditions, see Finding 15, "the reasons for disapproval are not unlike conditions of approval." Mac-Rich Realty Constr., Inc. v. Planning Board of Southborough, 4 Mass. App. Ct. 79, n.4 at 82 (1976).

Yeadon's position in this case is even stronger than that of the plaintiff in Mac-Rich. In that case, the planning board had "disapproved the plan for reasons stated," MacRich, supra, n. 4 at 82, and the Appeals Court held that "since the developer may make changes and resubmit the plan, the reasons for disapproval are not unlike conditions of approval." Id. In Yeadon's case, the board unanimously approved his plan (Finding 15), subject only to three stipulations, all of which he has met.

Moreover, a board's disparate treatment of two similar projects in the same area, granting favorable treatment to the one (such as Lordvale Acres) which would have had a significantly greater impact on the local environment, is "inexplicable and, therefore, an abuse of discretion." Colangelo v. Board of Appeals of Lexington, 407 Mass. 242, 246 (1990).

Finally, although the decision of a planning board in denying an application for a special permit cannot be disturbed unless it is based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary, MacGibbon v. Board of Appeals of Duxbury, 369 Mass. 512, 515 (1976) (MacGibbon III), quoting

MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 638-639 (1970) (MacGibbon II), the Supreme Judicial Court in MacGibbon III did disturb such a decision where it was not based on legally tenable grounds. 369 Mass. at 518-519. Since Yeadon did not even need to apply for a special permit, but nevertheless was the recipient of a planning board decision based on no legally tenable ground, he is clearly entitled to relief.

I agree with plaintiff's claim that the June 5, 1987 Plan No. 2 represented a compliance with the Board's earlier condition and that therefore the disapproval of Plan No. 2 in September 1987 was in excess of the Board's authority. Relief under Count I of plaintiff's Complaint, alleging that the 1987 disapproval of plaintiff's definitive plan (Plan No. 2) exceeded the Board's authority, is therefore allowed.

Planning Board regulations must meet the requirements of definiteness set forth in Castle Estates, Inc. v. Park & Planning Board of Medfield, 344 Mass. 329, 334 (1962). "[S]uch rules and regulations may be enforced only to the extent that they are comprehensive and reasonably definite so that owners may know in advance what may be required of them and what standards and procedures may be applied to them." Mac-Rich, supra at 82, quoting Castle Estates, Inc., supra at 334. As to Counts II and III, the Court declares that the regulations concerning dead end streets are illegally vague and ambiguous as applied to plaintiff.

Since under Mac-Rich, supra an approval subject to conditions is the functional equivalent of conditional approval, the Court

concludes under Count II that the Board exceeded its authority; annuls the Board's disapproval of Yeadon's subdivision; and remands this case to the Board to take action consistent with this opinion.

Count IV was not pressed.

When there has been a finding of bad faith, an award of costs is warranted. See G.L. c. 41, § 81BB. No case had decided what is meant by "costs." Court costs would be a pittance against the thousands of dollars of engineering and counsel fees plaintiff has suffered. I am of the opinion he is entitled at least to the unnecessary $47,000 engineering costs he bore. Young v. Planning Board of Chilmark, 402 Mass. 841, 847 (1988).

The statute does not mention counsel fees, but G.L. c. 231, § 6F does, and I have found that the "defenses" were not advanced in good faith. Consequently, interest should be computed at 150%, and I will award counsel fees.

As to Counts V and VI (damages and costs, respectively) I therefore award to plaintiff no damages under Count V, but do award him his extra engineering costs of $47,000.00, under Count VI, and allow time for plaintiff's counsel to file an affidavit setting forth his reasonable counsel fees, or to reach agreement with defendant's counsel.

ORDER

Based upon the foregoing, under Count I the 1987 disapproval of Plan 2 was in excess of defendants' authority. Under Counts II and III it is declared that the regulations concerning dead end streets are illegally vague and ambiguous as applied to plaintiff.

Count IV is dismissed.

The Court also annuls the Board's disapproval of Yeadon's Plan 2 and remands the matter to the Board to take further action consistent with this opinion.

No relief is ordered under Count V (damages), as beyond the statute, but Count VI (costs) is ALLOWED to the extent that plaintiff is awarded his extra engineering costs of $47,000.00 and plaintiff's counsel is allowed 30 days to file an affidavit setting forth his reasonable counsel fees, or a stipulation signed by both counsel.

Robert J. Hallisey
Justice of the Superior Court

5/11/90

DATED: May 11, 1990.
[s.d.]

A true copy by photostatic process.
Attest: Kathleen J. Capua
Asst. Clerk